IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.1747 of 2007

Shri Shaikh Ismail Shaikh Masoom — Petitioner
Vs.
Smt. Janabai Chagan Bagul — Respondent

Mr.P.N.Joshi for petitioner.

Mr.S.P.Kadam with Mr.Jagdish Choudhary and Mr. M.N. Sandyanshiv for respondent.

CORAM: B.H.MARLAPALLE, J.

June 14, 2007.

P.C.

1. Heard Mr.Joshi, the learned counsel for the petitioner and Mr.Kadam, the learned counsel for the respondent-landlady. The petitioner-tenant is aggrieved by the order passed by the lower Appellate Court on 31/10/2006 thereby allowing the appeal partly and setting aside the judgment and decree of the trial Court in RCS No.102 of 1999 dated 29/6/2004. The suit has been remanded by the trial Court with a direction to frame the issues, if required, on the basis of the amendment in the suit and new ground for eviction and after giving opportunity to both sides to adduce evidence if any, decide the suit afresh. The respondent-landlady has two sons - Anil and Sanjay. Originally in the plaint

she had sought the eviction of the respondent on the ground of bona fide requirements and more particularly of one of the sons. The suit was dismissed and, therefore, the landlady filed Civil Appeal No.38 of 2004. In the said appeal an application for amendment of the plaint was moved and the same was allowed by the lower appellate Court. Subsequently the pending appeal came to be decided by remanding the suit for fresh trial. The directions given by the lower Appellate Court by its judgment and order dated 31st October 2006 read as under:

> "The matter is remanded to the trial Court with the direction to frame the issues, if required, on the basis of the amendment in the suit and new ground for eviction, and after giving the opportunity to both sides to adduce evidence, if any decide the suit afresh."

2. Mr.Joshi, the learned counsel for the petitioner-tenant submitted that it was not permissible for the lower Appellate Court to remand the suit for fresh trial on all issues and in any case the issue of bona fide requirement was also adjudicated upon. He also stated that the purported

resignation of the second son Sanjay was dated 30/9/2005 whereas the amendment application was filed in September 2005 and, therefore, there was no cause of action to file the amendment application and the Managing Committee of the Sugar Factory had passed resolution on 14/10/2005 accepting the resignation. As against this, the amendment application was filed on 15/9/2005 and, therefore, on the date of the amendment application there was no cause of action.

3. Mr.Kadam, the learned counsel for the landlady has placed on record a copy of the resignation letter submitted by her son Sanjay and the resignation is dated 1/8/2005 and received by the Sugar Factory and acknowledged. It is not disputed that Sanjay as of now is not in the employment of the Sugar Factory (Rena Sahakari Sakhar Karkhana Ltd., Dilipnagar). As per the resignation letter Sanjay was working as Civil Engineer with the said Sugar Factory from 1st August 2002. The documents relied upon by Mr.Joshi clearly indicate that Sanjay's resignation was accepted and he was relieved. The suit premises is a shed ameasuring 22 ft. x 12 ft. and in the amendment application it was claimed by the landlady that on account of subsequent developments i.e.

Sanjay's resignation from employment, the premises were required for him to start a business. This reason was accepted and the amendment in the plaint was allowed by the lower Appellate Court. No fault could be found by allowing such an amendment.

4. Mr.Joshi's grievance that the issue of bona fide requirement was already adjudicated upon even if held to be correct, it is clear that it was not in respect of the requirement of Sanjay who was working with the Sugar Factory when the suit was dismissed. However, there is no justification in remanding the suit in its entirety to decide afresh on all the issues including the new issue of bona fide requirement of Sanjay. The suit on remand will have to restricted for adjudication only on the point of bona fide requirements for starting the business of Sanjay, the second son and no other issues which were already adjudicated upon. With this clarification the petition is disposed off.

(B.H.MARL